

Applicant: Drew Heimer  
Application Serial No.: 09/884,362  
Filing Date: June 18, 2001  
Docket No.: 1161-37  
Page 11

**REMARKS**

The application has been amended. Claims 13-20 have been withdrawn from prosecution. The drawings have been amended. Reconsideration is respectfully requested.

The Examiner has required restriction under 35 U.S.C. §121 stating that the application includes two distinct inventions. Group I, claims 1-12, is drawn to a stackable member, and Group II, claims 13-20, is drawn to a stackable module. In a telephone interview with the Examiner, a provisional election was made with traverse to prosecute the invention of Group I, claims 1-12. This election is hereby affirmed and claims 13-20 are withdrawn from prosecution.

The Examiner has objected to Figures 4-6 as not being outlined in the specification. Submitted herewith are proposed drawing amendments showing Figures 4-6 with reference numerals which track the description of the present invention beginning at page 7, line 24. Subject to the approval of the Examiner, formal drawings will be prepared including these drawing amendments. It is respectfully submitted that the amendments to the drawings obviates the Examiners' drawings objections.

Applicant: Drew Heimer  
Application Serial No.: 09/884,362  
Filing Date: June 18, 2001  
Docket No.: 1161-37  
Page 12

Furthermore, the Examiner has objected to the specification stating that Figures 4-6 show three separate portions of the base and these portions have not been described in the specification. This determination is respectfully traversed.

Base 116 collectively refers to the three portions of the base. As no claims are being prosecuted which are directed to the specific construction of base 116, no further details are deemed necessary. Reconsideration is respectfully requested.

Claim 8 stands rejected under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way to enable one skilled in the art to which it pertains or to which it is most nearly connected to make and/or use the invention. This determination is respectfully traversed.

Claim 8 sets forth that the lower surface of the base includes a perimetrical rib for engagement with the upper surface of the side walls. The Examiner notes that in Figure 3 the stacked members are shown flush. This arrangement is not inconsistent with either claim 8 or the description in the specification. It is contemplated that the ribs 32 described in the specification can fit within the border defined by the upper edge surface of the side walls. Thus, the rib would be in engagement with the upper edge surface of the side walls yet allow the

Applicant: Drew Heimer  
Application Serial No.: 09/884,362  
Filing Date: June 18, 2001  
Docket No.: 1161-37  
Page 13

stackable members to stack flush with each other. Accordingly, the specification and drawings fully support claim 8. Reconsideration is respectfully requested.

Independent claim 1 stands rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,403,679 to Stone (hereinafter "Stone '679"). Furthermore, claim 1 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Stone '679 in view of U.S. Patent No. 6,521,371 to Lavanture and U.S. Patent No. 6,572,999 to Stocchiero. This determination is respectfully traversed.

Stone '679 shows a modular battery assembly having perimetrical structure having three sides and an open top and bottom. Individual compartments are defined within the sides of each module to support the battery. The batteries are supported about the perimeter of the Stone '679 device. Figures 6A through 6C show the arrangement of the batteries on the Stone '679 modules.

As it relates to the claims of the present invention, Stone '679 fails to show a molded plastic module having a planar base for supporting a plurality of cells and having a perimetrical wall upstanding from and partially surrounding the base. It is clear that the present invention allows the cells to be supported on the base, across and between the upstanding walls. The Stone

Applicant: Drew Heimer  
Application Serial No.: 09/884,362  
Filing Date: June 18, 2001  
Docket No.: 1161-37  
Page 14

'679 structure provides individual compartments against the side walls for storage of individual batteries. Stone '679 fails to show each and every element set forth in claim 1 of the present invention.

Furthermore, Stone, alone or in combination with Lavanture or Stocchiero fails to teach or suggest the arrangement set forth in claim 1. Lavanture or Stocchiero each show individual trays for supporting a battery. No stackability in a bounded compartment is contemplated in either of the secondary references. Accordingly, Lavanture and Stocchiero fail to fill the deficiencies of Stone '679. Claim 1 of the present invention is therefore deemed to be patentably distinct thereover.

Independent claim 1 is further rejected under 35 U.S.C. §103 as being unpatentable over U.S. Patent No. 5, 981,101 to Stone ("hereinafter Stone '101").

Stone discloses a modular cell tray where plurality of identical modular trays can be vertically stacked to form an assembly. As is clearly shown and described in Stone, each tray includes a base, a spaced apart top, and sidewalls bounding the base and the top. When stacked in a plural vertical array, the base of one tray is placed over the top of the tray beneath it. Thus, double walls exist between vertically spaced cell arrays. In order to accommodate such an

Applicant: Drew Heimer  
Application Serial No.: 09/884,362  
Filing Date: June 18, 2001  
Docket No.: 1161-37  
Page 15

arrangement, the bottom wall 56 of one tray includes a channel which fits between a pair of spaced apart similar channels on the upper wall of the adjacent tray.

In the presently claimed invention, a stackable member for supporting a plurality of cells forming a battery is shown. Each module of the stackable member includes a planar base and a perimetrical wall defining an open ended interior compartment for accommodating the cells. When stacked, the planar base of one module forms the top surface overlying the cells in the module immediately therebeneath. In the presently claimed invention, there is no double wall between the plurality of cells. Such an arrangement is more economical to manufacture and efficient to use. As Stone fails to disclose, teach or suggest such an arrangement, the present invention is believed to be patentably distinct thereover.

Claims 2-12 all depend directly or indirectly from claim 1 and are therefore also believed to be patentably distinct.

Having responded in full to the present Office Action it is respectfully submitted that the application including claims 1 through 12 is in condition for allowance. Favorable action thereon is respectfully solicited.

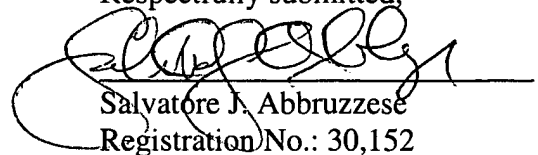
NOT EXAMINED  
NOT USED  
CONSIDER  
LAURENCE!

Applicant: Drew Heimer  
Application Serial No.: 09/884,362  
Filing Date: June 18, 2001  
Docket No.: 1161-37  
Page 16

Should the Examiner have any questions regarding this amendment, the Examiner is invited to contact Applicant's undersigned attorney at the telephone number listed below.

HOFFMANN & BARON, LLP  
6900 Jericho Turnpike  
Syosset, NY 11791  
(973) 331-1700

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Salvatore J. Abbruzzese", is written over a horizontal line.

Salvatore J. Abbruzzese  
Registration No.: 30,152  
Attorney for Applicant(s)